UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/C.12/1994/SR.39
1 December 1994

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Eleventh session

SUMMARY RECORD OF THE 39th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 28 November 1994, at 10 a.m.

Chairperson: Mr. ALSTON

CONTENTS

Consideration of reports (continued)

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant

Austria

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GE.94-70251 (E)

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS (agenda item 4) (continued)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT

Austria (E/1990/6/Add.5; E/C.12/1994/WP.12)

1. At the invitation of the Chairperson, Mr. Lang, Mr. Herdina, Mr. Rosenmayr, Mr. Ronovsky and Mr. Desser (Austria) took places at the Committee table.

2. Mr. LANG (Austria), introducing the second periodic report of Austria on articles 6 to 9 and 13 to 15 (E/1990/6/Add.5), highlighted the main aspects of his Government's replies to the Committee's list of issues (E/C.12/1994/WP.12).

3. He said that the differences in the treatment of Austrian or European Economic Area nationals and citizens of other countries referred only to specific elements of the labour laws, such as the need for an employment permit for non-nationals of the European Economic Area. The size of that group was regulated by periodically adjusted quotas decided within the legal framework of the law on the employment of foreigners. Those quotas took into account current trends in different sectors of the Austrian labour market. Other rights recognized by the Covenant were generally guaranteed irrespective of nationality, although some social support schemes differed according to the Austrian federal province in which they were applied.

4. As there was a wide spectrum of legal provisions at the constitutional level concerning non-discrimination, non-constitutional laws served mainly to fine-tune specific aspects of those rights guaranteed under the Constitution, such as in fields that were legally dominated by the freedom of private contracts.

5. With regard to the protection of Austria's traditional minorities, the numbers given on the basis of the 1991 census - approximately 30,000 ethnic Croats, 20,000 Slovenes, 20,000 Hungarians, 10,000 Czechs and 1,000 Slovaks - were subject to some reservations, as fewer people professed their membership of ethnic minorities on the occasion of national censuses than were known to use the respective minority languages in their private and cultural life. Advisory boards on ethnic minorities existed to safeguard the overall economic, social and cultural interests of those ethnic groups as well as of the Roma, a minority recognized as such since 1993.

6. Turning to measures adopted within the framework of the social market economy to safeguard the pursuit of the right to work, he pointed out that in 1990 the Government had decided to reform existing structures to improve the performance of its labour market policy and to meet current labour market requirements, by devolving responsibility for labour market administration away from direct central administration and by involving employer and employee interest groups in decision-making and improving active labour market policy, especially for disadvantaged groups such as women, older people, the long-term unemployed and the disabled.

7. The Committee had asked what the major consequences were of current manifestations of xenophobia on the right to work, to education and to take part in cultural life. Numerous institutions and projects existed which were aimed at integrating foreigners into society. Special teachers were employed in schools, and an "integration fund" supported the adjustment of migrants to life in Vienna. Measures to combat xenophobia in the educational field were also common. Concerning the rights of women in the public employment sector, the Federal Equal Treatment Act had made advancement schemes for women in the public service compulsory as from 1 January 1994. As to the private sector, an awareness training project on the advancement of women had been launched in 1991, aimed at raising the ratio of women. In order to make the implementation of the principle of equal opportunity for promotion more effective, violation of the principle justified compensation of up to four times the difference between the actual monthly income and the income to which the person would have been entitled had she or he been promoted. Austria was one of the few Governments to have a minister exclusively in charge of women's issues.

8. As to the status of vocational guidance and training, employment and occupation according to sex, religion or nationality, Austria was one of the few, or perhaps the only, country other than Germany to have established the much praised "dual vocational system", comprising simultaneous, practical, on-the-job training and participation in courses at vocational training schools. That scheme was certainly one of the backbones of the high qualitative standard of the Austrian workforce. Austrian unemployment rates as measured by the criteria of the Organisation for Economic Cooperation and Development (OECD) were even lower than those reflected in national statistics. The employment rate of women stood at 63.5 per cent in 1993; that of men, 77.8 per cent. Criteria for remuneration set out in collective labour agreements must have due regard to the principle of equal pay for equal work and must not provide for a distinction in the assessment of women's work on the one hand and men's work on the other, which would result in discrimination. Efforts were under way to implement regulations on working hours. The right to join labour unions was reflected in the strength of the Austrian Trade Union Federation. Most people in dependent employment, such as employees, apprentices, persons working at home on contract or in the field of development aid, were entitled to participate in the national employment insurance scheme. Recipients of unemployment benefits were insured against illness during the period in which they received unemployment benefits. The Austrian social security and pension scheme was highly developed, and the system of disability benefits equally effective.

9. As concerned the right to development, higher education was in general funded by the federal and provincial authorities, and access to public education institutions was open to all. Regarding requirements for admitting foreign nationals to higher education institutions in Austria, on the basis of reciprocity, tuition fees were requested from some students who were nationals of certain countries, but nationals of European Union member States would not have to pay any tuition fees after Austria's accession to the Union in 1995. Beginning with the 1994-1995 academic year, the Austrian system of higher education provided by universities and colleges would be supplemented by the introduction of post-secondary schools. The vast majority of education facilities in Austria were public.

10. Turning to the refugee population in Austria, he said that nearly 1 per cent of the country's population was made up of refugees from Bosnia alone. Consequently, the education of refugee children in their mother language had been addressed, particularly since the outbreak of war in the former Yugoslavia. Various laws existed to provide for cultural protection of ethnic minorities and their school education in their own mother tongue. Under the Ethnic Minorities Act, measures and projects to preserve and maintain the existence of ethnic minorities, their cultural identity and their ethnic characteristics and rights were to be promoted, inter alia, through financial subsidies.

11. Regarding measures taken to prevent scientific and technical progress from being used for purposes contrary to the enjoyment of human rights, the Genetic Engineering Act reflected some caution with respect to unchecked scientific and technical progress which was detrimental to human dignity.

12. Mr. WIMER ZAMBRANO asked about the general provisions of the Genetic Engineering Act.

13. Mr. ROSENMAYR (Austria) replied that the Act had been enacted by Parliament less than one year earlier, in accordance with regulations of the European Economic Community. Different categories and ways of dealing with genetically altered organisms were established by the law, which also set up a supervisory body. However, as the Act had only just come into force, it was not yet known how it would work. It did none the less contain very detailed legislation which would enable the Government to meet any potential ethical dangers in the field of genetic engineering.

14. The CHAIRPERSON invited the Committee to begin its article-by-article consideration of the report, beginning with article 2.2 on non-discrimination.

15. Mr. CEAUSU said that while most answers to the Committee's questions had been quite satisfactory, further clarification was needed on the Austrian replies to issues Nos. 2 and 3. On page 3 of the Government's written reply to the Committee's list of issues (entitled "Reply to supplementary questions of members of the Working Party dealing with the second periodic report of Austria", BMAA-VRB of 15 November 1994), discrimination was defined as any discriminatory distinction made without substantive justification. Could the Government give an example of such substantive justification in the fields covered by the Covenant? Issue No. 3 concerned the number of people belonging to the Slovene, Croat, Hungarian and Czech national minorities and asked whether Austria had other historical national minorities. It also asked whether there were national minority organizations and procedures enabling them to be consulted in matters which concerned them. The representative had noted the difficulties in establishing the real size of the ethnic groups. According to the Encyclopedia Britannica 1993 Yearbook, of a total population of 7,857,000, 1.7 per cent, or some 130,000 persons, were Yugoslavs, while 0.8 per cent were Turks. He asked the Government to comment on those figures.

16. Mrs. JIMENEZ BUTRAGUEÑO asked whether there was any discrimination vis-à-vis women and whether women and men were treated equally.

17. Mr. GRISSA noted that there was growing xenophobia in Austria and wondered how it affected the treatment of foreigners with respect to their social and economic rights. Was there any negative impact on employment and the enjoyment of cultural rights?

18. Mr. SIMMA said that according to the core document (HRI/CORE/1/Add.8, para. 61), the European Convention for the Protection of Human Rights and Fundamental Freedoms had been the only instrument whose provisions had been incorporated into domestic law; he inquired about the legal status of the International Covenant on Economic, Social and Cultural Rights and whether that instrument was of practical relevance for the drafting of economic and social policies in Austria. He also would like to know whether non-governmental organizations (NGOs) had participated in the drafting of the Austrian report and whether the report would be made available to the Austrian public. Concerning immigration, an article in The Independent newspaper of 14 August 1993 had stated that under the anti-immigration law which had come into force on 1 July 1993, immigrants must have accommodation measuring 10 square metres to qualify for a residence permit; those who did not were put on notice that they could be summarily deported; the article had also reported that 103,000 foreigners did not have the required living space, yet neither did 73,000 native Austrians, and he wondered whether that was not an example of discrimination.

19. Mr. KOUZNETSOV requested some brief background information on immigration law from the point of view of non-discrimination and inquired whether, for the purposes of immigration, no distinction was made by nationality.

20. Noting that an international treaty could be approved by the Nationalrat with the reservation that the requisite laws for its application in Austria were adopted (para. 60 of the core document), he asked whether all such legislation had, in fact, been promulgated.

21. Mr. ROSENMAYR (Austria), replying first to a question by Mr. Ceausu, said that the Constitutional Court of Austria had examined a number of cases involving, inter alia, sexual discrimination. For example, it had judged unconstitutional that the retirement age for men was 65 and only 60 for women and that widows were eligible for a pension upon the death of their husbands but widowers were not upon the death of their wives. With regard to minorities, his delegation had understood the questions under issue No. 3 to be referring only to traditional minorities that had Austrian nationality. He noted in that context that a discussion had begun in the Council of Europe on whether new minorities should be dealt with in an additional protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms. It was probably true that persons of Yugoslav origin made up more than 1.7 per cent of the population of Austria; persons from the former Yugoslavia constituted the largest group of non-nationals in the population.

22. Turning to Mrs. Jiménez Butragueño's question on sexual discrimination, he said that it could not be considered that there was any justification under Austrian law for keeping women at home. He cited as an example legislation on maternity leave, for which fathers were also eligible.

23. With regard to Mr. Grissa's question, he said that although there was some xenophobia in Austrian society, overt manifestations were restricted to a small fringe. His Government sought to offset such tendencies through

cultural events and, above all, education. For example, special classes were offered to non-German-speaking pupils. An office in Vienna dealt specifically with problems that foreigners faced. The State television broadcast programmes for minorities, including the so-called "new minorities". By law, radio and television stations were required to deal with social questions in a tolerant fashion.

24. The defeat in the recent referendum of the proposal to introduce restrictions on admissions for aliens was proof that xenophobic tendencies in Austria were not widespread.

25. Responding to a question by Mr. Simma, he acknowledged that the European Convention for the Protection of Human Rights and Fundamental Freedoms was the only human rights instrument that formed part of Austrian domestic legislation and constitutional law. Austria had ratified virtually all the human rights conventions with the reservation that they were not part of Austrian domestic law, but only binding as an international obligation. None the less, those international obligations had an impact, because they were sometimes cited by the Constitutional Court in rulings on domestic legislation. In a recent case, for instance, the Constitutional Court had made specific reference to the International Convention on the Elimination of All Forms of Racial Discrimination.

26. On the question of involving NGOs in the drafting of Austria's report, he said that while his Government collected information from many private institutions, it did not formally seek the advice of NGOs, few of which were active in the field of social rights. He did not know whether Austria's report would be published, but he assumed that it would.

27. Reference had been made to the recently enacted Aufenthaltsgesetz, or residence law, which had been inaccurately described as an "anti-immigration law". Its purpose was to establish annual quotas, which new immigration permits could not exceed. The same quota system was applied in many other countries, including the United States of America, Canada and Australia. There had been initial difficulties when the law had come into force, because the municipal and provincial authorities had been unfamiliar with its provisions, but such problems had been declining in number. Although immigrants were granted a residence permit only if they could demonstrate that they had appropriate housing, he was not aware of a "10-square-metre rule". There had never been any mass expulsions; decisions to expel were taken on a case-by-case basis.

28. The admission of non-nationals was a problem that must be addressed, and, in many European countries, new legislation had been adopted. Austria had a high rate of illegal immigration. In any event, the admission of non-nationals to a State was not regulated by the Covenant. Austria had recently recast its residence law (Aufenthaltsgesetz), aliens law (Fremdengesetz) and legislation on the right of asylum. It was true that there had been some discrimination against non-nationals, primarily persons from non-member-States of the European Union, in connection with obtaining a residence permit.

29. Concerning the question of whether all requisite laws had been enacted to fulfil obligations under the Covenant (para. 60 of the core report), his Government was of the opinion that they had and that it was not necessary to give immediate effect in domestic legislation to the provisions of the Covenant.

30. Mr. LANG (Austria), replying to Mr. Simma's question on the input of NGOs into the preparation of the Austrian report, said that information had been gathered from many sources including NGOs. However since management and industry had an important part in government decision-making, there was less need for the formal inclusion of the NGOs in preparing the report.

31. Concerning Mr. Simma's question on the incorporation of the Covenants into Austrian law, he said that Austria was committed to comply with the provisions of the Covenants at the level of international law but relied on domestic law and the Constitution for implementation.

32. Mr. SIMMA asked what the Austrian Parliament's political reasons had been for giving the European Convention of Human Rights treatment that differed from the other human rights treaties.

33. On the question of minorities he noted that the Roma were recognized as a minority, and asked whether he was correct in assuming that Austria had no law like that of Germany which required that in order to be recognized, a minority had to have a traditional place of settlement.

34. He wished to know whether the pension scheme of Austrian universities still provided that if the widow of a university professor was a foreigner she was not entitled to a pension but only to a lump sum.

35. Mr. LANG (Austria), replying to Mr. Simma's first question, said that it was considered that the content of the European Convention of Human Rights corresponded more closely than that of the Covenants to Austrian domestic law. The choice had also been dictated by the possible practical implications for the jurisprudence of the Constitutional Court, with overlapping and contradictions, if the Covenants were incorporated into domestic law.

36. Mr. ROSENMAYR (Austria) added that there had been no real discussion of the matter in Parliament but that the Government had proposed that the two Covenants should be given the status of constitutional law. However, Parliament had decided to give them the same rank as ordinary legislation.

37. On the question of minorities, the Minorities Act did not require minorities to be settled in a specific place, which thus allowed migrant peoples to be regarded as minorities. The only question was whether the relevant groups were large enough to constitute a minority, and after discussion it had been decided that they were.

38. On the question of equal treatment for men and women in university pension schemes, he said that Austria had a law applying article 4 of the Convention on the Elimination of All Forms of Discrimination against Women which introduced positive discrimination in favour of women when qualifications were equal.

39. The matter of pension rights might depend on a bilateral agreement, but he was unable to give a specific response at that time.

40. The CHAIRPERSON said that the Committee would like to have a specific answer to the question of pension rights either at the present session or at a later stage.

41. Mr. CEAUSU asked what was the new employment policy necessitated by the large influx of workers from south-east Europe, mentioned in the written reply of the Government of Austria to issue No. 4.

42. The reply to that issue contained a short description of options for creating new employment conditions. Were those options components of the Government's policy or merely the conclusions of a labour relations body? A reference was also made to the so-called "Labour Foundations" which were to play an important role in the future. What was that role?

43. With respect to issue No. 6, the reply to the question on judicial proceedings on cases of gender discrimination in pay fixing stated that "it needs to be pointed out that in practice the opportunity to raise one's claim to equal treatment before a court is rarely taken". If the matter was left to the person concerned she might well fear reprisals by the employer. Why did the labour authorities in Austria not consider it necessary to become involved?

44. Referring to the written reply to issue No. 7, he noted that the figure for the average number of the active population in 1993 was given as 3,683,000, which included unemployed persons. According to the statistics in annex C of the written reply, the total number of occupied persons in the same year was 3,055,000. Did the difference between the two figures represent both the unemployed and the self-employed? He wished to have an idea of how many unemployed people there were in Austria.

45. Mr. TEXIER, speaking on the question of labour relations, said that work in prisons was regularly discussed by the ILO Committee of Experts on the Application of Conventions and Recommendations which had a long-standing dispute with the Government of Austria on arrangements made with the Austrian prison authorities whereby prisoners worked for outside private companies. The ILO Committee of Experts considered that by virtue of article 2, paragraph 2 (c) of the Forced Labour Convention 1930 (No. 29), such work should be done under the supervision and control of the public authorities. The Convention prohibited prisoners from being placed at the disposal of private companies and it also applied to workshops run by private companies in prisons. Apparently the problem was not yet settled. An increase of payment to prisoners and their inclusion in the social security system were among the Government's stated aims but had not yet been achieved.

46. Turning to the question of equal pay for women and men, he said that the report did not conceal the fact that Austria's wage structure discriminated against women. In its comments in 1994 on the Equal Remuneration Convention, 1951, No. 100, the ILO Committee of Experts welcomed the abolition of certain institutionalized inequalities, for instance in the confectionery industry. Could the delegation comment on developments on the basis of the points raised by the ILO Committee of Experts?

47. With respect to the minimum wage he noted that public service pay was fixed by law but that private sector pay seemed to be based on collective agreements in the various industries. Was there a national minimum wage?

48. He had understood that the private sector in Austria was slow to implement legislation on health and safety at work because the punishments were not sufficiently severe to deter employers, who preferred to run the risk of a fine rather than introduce expensive health and safety facilities.

49. Mrs. JIMENEZ BUTRAGUEÑO, after associating herself with Mr. Texier's comments regarding women's wages, requested some further information on the special programmes for elderly and disabled persons, and in particular on whether the Government had an obligation to find employment for disabled persons in the administration.

50. Mr. CEAUSU noted that in 1993 the Labour Inspectorate had detected 14,000 infringements of the regulations. He asked what penalties were imposed by the authorities and what the authorities were doing to prevent and discourage such infringements in future.

51. Mr. ROSENMAYR (Austria), in connection with the question concerning the influx of migrant workers from south-east Europe, informed the Committee of a change in the legislation on the employment of foreigners. It was now no longer necessary for them to obtain an individual work permit for a specific post; instead, they could obtain a general work permit valid for five years. Originally, Parliament had thought that migrant workers would return to their own countries after a few years, but many had remained in Austria. Also, the public body which had decided on work permits for foreigners had been replaced by a private labour market service. Quotas, lasting one year, were fixed for the employment of foreigners in specific sectors of the labour market. The new labour market service, which was under the supervision of the Ministry of Labour and Social Affairs, was more flexible than the previous bureaucratic system and had more leeway in finding means of helping people who were seeking employment. In addition, there were the Labour Foundations set up by specific employers to meet the needs of certain sectors of the market.

52. The reason why relatively few claims for equal treatment were submitted to the courts by women was that Austria had a very effective Equal Protection Attorney - a kind of labour ombudsman for women - with offices in all the provinces, who solved many conflicts informally. There was also an Equal Treatment Commission, which dealt with the equal treatment of women in the workplace and could make recommendations to employers.

53. He was unable to provide an answer to the question concerning the figures given on page 16 of his Government's written reply to the list of issues, but he might be able to do so at the next meeting. The statistics on unemployment, juveniles and foreigners contained in the document entitled "Austria's Labour Market Policy", produced by the Federal Ministry of Labour and Social Affairs, which had been distributed to members might help to clarify the matter. For instance, it indicated that 222,000 persons had been unemployed in 1993. He was also unable, at the moment, to give a satisfactory answer to the question concerning prison labour. In any case, the labour performed by prisoners could not be described as "forced", since prisoners were not legally obliged to work. He would give a more detailed reply at the next meeting.

54. Every enterprise had a legal obligation to employ a certain number of disabled persons, depending on its size. If the requirement was not met, a payment in lieu must be made. Public authorities had a strict obligation to comply with the requirement.

55. Collective agreements were binding but they must conform to the law. If they violated the Equal Protection Act, for example, they would be declared void. A minimum wage was normally laid down in collective agreements, which existed in nearly all sectors of the economy. Sectors where there was no collective agreement could be covered by the extension to them of a collective agreement of another sector. If no minimum wage was fixed, the Federal Arbitration Authority could establish it.

56. New legislation on workers' protection had been enacted in June 1994, containing provisions on safety and hygiene in the workplace. If they were infringed, fines of from 4,000 to 200,000 schillings could be imposed by the administrative authorities. The Labour Inspectorate had a duty to inspect all enterprises with a view to ascertaining whether the safety and hygiene regulations were being complied with. Inspectors must point out shortcomings to employers. If the shortcomings were rectified, no fine was imposed; if they were not rectified, the inspectors had a legal obligation to report the case to the authorities so that a fine could be imposed. If the authorities failed to impose a fine, the inspectors could appeal to a tribunal. In flagrant cases endangering workers' safety, an immediate injunction could be issued by the Labour Inspectorate. In most cases, a notice sent to the employer was sufficient to remedy the situation.

57. Mr. HERDINA (Austria) added that the figure of 14,000 infringements might be misleading. Minor incidents might be involved. If a worker suffered an accident, criminal proceedings could be instituted and the employer might have to make a further payment in addition to the fine.

58. Mr. GRISSA noted that in Austria every enterprise had to employ disabled persons, depending on its size. He asked what the position was with regard to sectors in which few disabled could be employed, such as mining, and what happened to the payments that had to be made as a result of failure to employ the requisite number of disabled persons.

59. Mr. ROSENMAYR (Austria) replied that all employers with more than 25 workers had to employ 1 disabled person for every 25 workers employed, with the exception of international organizations. The Ministry of Labour and Social Affairs could change that number for those sectors of the economy in which the requirement could not be reasonably met, but even then 1 disabled person must be employed for every 50 workers.

60. Mr. GRISSA asked whether the Government employed 1 disabled person for every 25 employees and whether the payments in lieu went to the disabled or to general government revenues.

61. Mr. HERDINA (Austria) replied that the fines went to a special fund used to support disabled persons and to finance studies on disablement. The Government must employ disabled persons and could not free itself by making payments in lieu.

62. Commenting on labour relations in general, he pointed out that in 1994 there had not been a single strike in Austria.

63. Mr. SIMMA said that it would be very helpful if, at some stage during the proceedings, the delegation could, after the discussion on each group of articles, very briefly indicate how the implementation of the rights concerned had evolved since the previous occasion on which the Committee had dealt with them. If only detailed laws were mentioned, it was difficult for members to gain an overall picture of how the situation had developed.

64. It was customary for Austrian representatives in international bodies to point out the system of social partnership in Austria and the complete absence of strikes. It seemed, however, that the social partnership, in its present organization, had come to a crisis. For instance, during the recent general elections, a well-known politician had caused an uproar over the monthly salaries of the presidents of the Arbeiterkammern. Some information on that point would be appreciated.

65. Mr. HERDINA (Austria) said that the statistics supplied showed an increase in the percentage of women in the labour force. Mr. Simma was correct in thinking that during the recent general election the case of one Arbeiterkammer president's salary had been criticized. The salaries of Arbeiterkammern presidents varied from province to province. The system was, in fact, being seriously debated; it had brought Austria a great deal of stability, but it might have become elephant-like. It could be discussed at the next meeting.

The meeting rose at 1 p.m.